Journal of Legal Analysis
Publication Date: 3rd April 2026
https://jla-international-peer-reviewed-journal.iarrj.com/

GROUND OF APPEAL ON QUESTION OF LAW: A DISCOURSE ON TYPE OF APPEAL IN DOUBLE APPEAL IN CIVIL MATTERS

IKIMI Iniye Linda Iyaye[1]
Nigerian Law School.
Email: inisspecial@yahoo.com

ABSTRACT

This paper is a discourse on the type of appeal by which a right of appeal can be exercised in double appeal from High Court to Court of Appeal in civil matter, where the ground of appeal involves question of law alone. There are two types of appeal provided in the Constitution of the Federal Republic of Nigeria 1999. The paper shall consider the types of appeal, grounds of appeal, particularly, ground of appeal on question of law alone, double appeal, and the principle of similarity rule of statutory interpretation. But, first, the paper will delve into the Nigerian legal system, hierarchy of courts in Nigeria in relation to this discourse and the contextual meaning of appeal. The research methodology adopted in the course of this study is the doctrinal methodology. It was discovered that, although there seems to be no pronouncement of the apex court in respect of this issue in the Constitution of the Federal Republic of Nigeria 1999, but there is such pronouncement of the Court on same issue under the 1979 Constitution. Consequently, the paper suggests that by the application of the principle of similarity rule of statutory interpretation, this issue is viewed to be settled by the apex court and final arbiter in the judicial ladder pending any further pronouncement on the issue by the same court on the extant Constitution.

Keywords: *Appeal, Double appeal, Grounds of law, Civil matters, Right of appeal, Court decision.*

Introduction

The administration of justice is usually the primary function of the judiciary comprising the court system, including judicial personnel that administer justice in those courts.[1] Judicial powers are vested in the courts.[2] Cases are heard and determined for the first time by a trial court. In such situation, the court is regarded as a court of first instance and may also be referred to, on appeal, as the trial court. On the other hand, a court may be sitting over a case which has already been heard and determined by a trial court. A court is said, in such circumstance, to be sitting as an appellate court or exercising its appellate jurisdiction over the case. According to Oputa, justices of the court are human beings capable of erring. It will be shortsighted arrogance not to accept this obvious truth. It is correct that

* Iniye Linda Iyaye Ikimi, LL.M, B.L, LL.B, ACIArb., Deputy Director, Nigerian Law School, inisspecial@yahoo.com, ORCID iD - 0009-0006-7159-4127.

[1] John O. Asein, *Introduction to Nigerian Legal System* (Ababa Press Ltd, 2nd edn., 2005, Lagos) 169.

[2] Section 6(1) and (2) Constitution of the Federal Republic of Nigeria 1999.

the court can do an inestimable amount of good through its wisdom and sense of justice. Similarly, the court can also do incalculable harm through its mistakes.[3] Thus, there is the need for an appeal where an aggrieved party or a person interested, reasonably believes that an incalculable harm has been done through the mistake of a court. The inherent jurisdiction of a court is embedded in the judicial powers conferred by the statute that created the court.[4] Judicial powers of superior courts of record in Nigeria are conferred by the grundnorm,[5] which is the Constitution of the Federal Republic of Nigeria. Superior courts include *inter alia* the High Court of a State, Court of Appeal and Supreme Court.[6]

Aside superior courts which are a creation of the constitution, there are some other courts which are established by State laws. These courts are regarded as inferior courts. The jurisdictions of inferior courts are also conferred by the State law which established the courts.[7] Magistrate's Court, for example, is regarded as an inferior court. Each State in Nigeria has its own magistrate's court system. The court is established under the respective Magistrates' Court Law in the southern States, and District Court Law in the northern States of the federation.[8] Magistrate's Court, like the superior courts, administer both Common law and equity and, has power to grant all legal and equitable remedies.[9] The court exercises both civil and criminal jurisdictions in virtually all the southern States. However, in most of the northern States, Magistrate's Court exercise only criminal jurisdiction. Civil jurisdiction is administered by the court, not as a Magistrate's court but as District court. The same officer who sits as a magistrate in criminal cases also presides over civil matters as a district Judge.[10] Basically, inferior courts are conferred with original jurisdiction, but superior courts of record exercise both original and appellate jurisdictions except a few superior courts such as Customary Court of Appeal and the Sharia Court of Appeal which appear to be Constitutionally devoid of original jurisdiction. They exercise only appellate and supervisory jurisdictions in civil proceedings over cases that they can adjudicate.[11]

The Constitution of the Federal Republic of Nigeria 1999 stipulates two types of appeal by which the right of appeal can be exercised before a superior court sitting in its appellate jurisdiction. This paper focuses on the type of appeal that will be employed in a civil matter, in which there is a double or further appeal from High Court to Court of Appeal, particularly where the ground of appeal involves question of law alone as provided in section 241(1)(b) of the Constitution of the Federal Republic of Nigeria 1999. The paper will briefly delve into the legal system, and hierarchy of courts in Nigeria in relation to this discourse before addressing the contextual meaning of appeal. The paper also considers types of appeal, grounds of appeal including ground of appeal on question of law alone, double appeal, and the principle of similarity rule of statutory interpretation. The question this paper seeks to address is what type of appeal should accrue where the appeal is a double appeal from High Court to Court of Appeal and when the ground of appeal is on question of law alone. Secondly, does the type of appeal differ when the appeal is against the decision of the High Court sitting as a court of first instance where the ground of appeal is on question of law alone? Doctrinal methodology was adopted during this research, and it was discovered that the penultimate court has made

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[3] C. A. Oputa, *Themes on Judicial Activism and Law* (Justice Watch, 2014, Mabushi Abuja) 55.
[4] John O. Asein, *Introduction to Nigerian Legal System* (Ababa Press Ltd, 2nd edn., 2005, Lagos) 169.
[5] Section 6 Constitution of the Federal Republic of Nigeria 1999.
[6] Section 6(3) Constitution of the Federal Republic of Nigeria 1999.
[7] John O. Asein, *Introduction to Nigerian Legal System* (Ababa Press Ltd, 2nd edn., 2005, Lagos) 224.
[8] Ibid.
[9] Ibid, 225.
[10] Ibid.
[11] Sections 262, 267, 277, and 282 Constitution of the Federal Republic of Nigeria 1999.

ample pronouncements on the issue although a few decisions seem to be conflicting, but in essence there is no such conflict. More so, there seems to be no pronouncement of the apex court on the issue in respect of the extant constitution. However, by the principle in similarity rule of statutory interpretation, the interpretation of the apex court in the previous constitution can be applied to the provisions of the extant constitution.

1.1 The Nigerian Legal System

A legal system comprises a legal order of normative rules. The Nigerian legal system consists of the totality of laws or legal rules and legal machinery which are recognised in the country as a sovereign and independent nation.[12] For there to be a viable legal system within a defined area, there must be in place certain ultimate principles which are self-existent, and from which all other principles are derived. The set of self-existent but ultimate principles which is the foundation for all other rules in a normative system has been described as the grundnorm. It is the ultimate rule of recognition or the basic norm. It is the highest norm in a hierarchy of norms beyond which there should be no double enquiry.[13] The Constitution of the Federal Republic of Nigeria is the grundnorm from which other laws are derived.[14] One of the notable features of the Nigerian legal system is the tremendous influence of English law upon its growth.[15] Nigeria has from the very inception of its organisation of justice inherited most of the traditions of the English Common Law.[16] The historical connection of the country with England through colonialism, has left a seemingly indelible mark upon the legal system. English law forms a substantial part of Nigerian law.[17]

1.2 Hierarchy of Courts

Within the country's framework is a hierarchy of courts ranging from the humblest Native Courts (now referred to as Customary Courts in the south or Area Courts in the north) at the base of the judicial pyramid to the Supreme Court at the apex.[18] Although at the bottom of the ladder are the customary and area courts, this, however, does not derogate from their importance. These courts are important, for they dispense justice at the grassroot level in the society.[19]

This paper does not intend to list the various courts in Nigeria and their hierarchy but would streamline the hierarchy to the courts within the context of this discourse. At the topmost rung of the judicial ladder is the apex court known as the Supreme Court. The Constitution formally established the Supreme Court as the highest court from the determination of which no appeal lies to any other body or person.[20] Thus, the Supreme Court's decisions are final and unappealable. The Court of Appeal is next to the Supreme Court in the judicial hierarchy. Thus, it is the penultimate court in the hierarchy of courts and the intermediate appellate court between the High Court and the

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[12] John O. Asein, *Introduction to Nigerian Legal System* (Ababa Press Ltd, 2nd edn., 2005, Lagos) 1.
[13] Ibid.
[14] Fabian Ajogwu, *Law and Society* (Centre for Commercial Law Development,2013, Lagos) 17.
[15] Akintunde Olusegun Obilade, *The Nigerian Legal System* (Spectrum Law Publishing, 1979, Ibadan) 4.
[16] T. Olawale Elias, *The Nigerian Legal System* (Routledge & Kegan Paul Ltd, 2nd edn, 1963, London) 32.
[17] Akintunde Olusegun Obilade, *The Nigerian Legal System* (Spectrum Law Publishing, 1979, Ibadan) 4.
[18] T. Olawale Elias, *The Nigerian Legal System* (Routledge & Kegan Paul Ltd, 2nd edn, 1963, London) 32.
[19] Akinola Opara, The Law is for All (1982, Fourth Dimension Publishing Co. Ltd, Enugu) 85.
[20] Section 235 Constitution of the Federal Republic of Nigeria 1999; Fidelis Nwadialo, *Civil Procedure in Nigeria* (University of Lagos Press, 2nd edn. 2000, Lagos) 770.

Supreme Court. The High Court and some other courts of coordinate jurisdiction are directly below the Court of Appeal in the judicial ladder. It should be noted that, just like the Court of appeal and the Supreme Court, the High Court is a court of both original and appellate jurisdictions. In addition to the High Court being a court of trial, it also hears appeals from Magistrates' Courts, and Districts Courts.[21] Magistrate's Court is on the lower rung of the ladder. It is not a court established by the Constitution and not regarded as a superior court of record but as an inferior court. There are other courts below the Magistrate's Court such as the Customary Court and Area Court stated earlier.

The network of appeals from the lowest to the highest courts necessarily implies a system of precedent.[22] One justification for the hierarchy of courts lies in the need to achieve certainty and stability in law. Litigants expect that like-situations ought to be decided alike. Equally, lower courts ought to rely on past decisions of higher courts as laying down authoritative pronouncements on law which they should follow in deciding cases pending before them.[23] Consequently, regulated ordered expectations will not be disturbed. This is referred to as the doctrine of judicial precedent.[24] The doctrine of judicial precedent finds its expression in the doctrine of *stare decisis*. It is a cardinal principle of law under the doctrine of *stare decisis* that an inferior court is bound by a decision of a superior court, however sure it may be that the decision has been wrongly decided.[25] On the other hand, the doctrine of judicial precedent postulates that where the facts in a subsequent case are similar or close as facts in an earlier case that had been decided upon, judicial pronouncements in the earlier case are subsequently utilised to govern and determine the decision in the subsequent case.[26] The doctrines of judicial precedent and *stare decisis* are the two types of doctrines by which the courts create and develop case.[27]

1.3 Contextual Meaning of Appeal

Cases between disputing parties may be brought before a court, having both original and appellate jurisdictions, either for the first time, or for consideration of the decision of a lower court. Consideration, by a court, of the decision of a lower court may be by way of appeal. The appellate system is predicated on the inevitable truth that human perfection is an ideal impossible to attain.[28] No person is infallible. It therefore becomes necessary that in the adjudication of the legal rights and duties of a person, no person shall be compelled to solely trust on the 'wisdom' of one fellow mortal.[29] The first primary purpose of the appellate system is to correct or eliminate errors of lower courts. Another purpose is the doctrine of judicial precedent.[30] Appellate system is the system of appeal which serves as springboards from which precedents emerge.[31]

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[21] Fidelis Nwadialo, *Civil Procedure in Nigeria* (University of Lagos Press, 2nd edn. 2000, Lagos) 767.
[22] T. Olawale Elias, *The Nigerian Legal System* (Routledge & Kegan Paul Ltd, 2nd edn, 1963, London) 32.
[23] Ilochi A. Okafor, "The Appellate System of Justice in Nigeria" in T. O. Elias and M. I. Jegede (Eds.), *Nigerian Essays in Jurisprudence* (MIJ Publishers Ltd, 1993, Lagos) 313.
[24] Ibid.
[25] NEPA v. Onah (1997) 1 NWLR (pt. 484) 680; (1997) LPELR-1959(SC) (p. 9, para. C) *per* Mohammed, J.S.C.
[26] Sheka v. Bashari (2013) LPELR-21403(CA) (p. 45 para. A); AG Lagos State v. Eko Hotels Ltd & Anor (2017) LPELR-43713(SC) (Pp. 13-15 para. F).
[27] Kaase Fyanka, *Nigerian Case Law Method* (Kraft Books Ltd, 2016, Ibadan) 380.
[28] Ilochi A. Okafor, "The Appellate System of Justice in Nigeria" in T. O. Elias and M. I. Jegede (Eds.), *Nigerian Essays in Jurisprudence* (MIJ Publishers Ltd, 1993, Lagos) 312.
[29] Ibid.
[30] Ibid, 313.
[31] Ibid, 332.

Appeal has been defined as the process by which an appellate court considers the decision of a lower court to determine whether or not there is error in such decision.[32] The Black's Law dictionary defines appeal as a proceeding undertaken to have a decision reconsidered by a higher authority; especially the submission of a lower court's decision or agency's decision to a higher court for review and possible reversal.[33] The Constitution of the Federal Republic of Nigeria does not define the term "Appeal". However, it defines "decision". The term "Decision" has been defined, in relation to a court, as any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation.[34] Reference to 'decision' in this paper is reference to decision in civil matter. A definition is given to the term "Appeal" in the Court of Appeal Act. The Act defines appeal thus – 'Appeal includes an application for leave to appeal.'[35] An appeal against a decision of a court may be an appeal against the final or interlocutory decision of the lower court. In the case of *Ihedioha v Nwosu,*[36] the Supreme Court stated that appeal which is a judicial examination by a higher court of the decision of an inferior court must be against the *ratio decidendi* of the case and not against the *obiter dicta*.[37] A *ratio decidendi* is the legal principle, framed by the court, which is important in the determination of the issues raised in a case, that is, the binding portion of the decision, the reason behind a decision.[38] On the other hand, an *obiter dictum* is a passing remark by a judex in a decision which is not necessary for it.[39] In other words, an *obiter dictum* is a side remark or statement made by a Judge, which statement have no connection to the issues in dispute in the case, and which remark or statement have no direct bearing on the decision made in the case.[40] Therefore, an appeal is an invitation to a higher court to review the decision (*ratio decidendi*) of a lower court to find whether on proper consideration of the facts placed before it, and the applicable law, the court arrived at a correct decision. It is not therefore the inception of a new case, but rather, the continuation of the original suit, except that it makes a complaint against the decision of a lower court.[41]

1.3.1 Appeal as Distinct from *De novo* Trial

Although appeals could be regarded as rehearing of a case,[42] the rehearing in this circumstance is different from rehearing a case *de novo. De novo* trial is a fresh hearing and determination of a case by a court, but usually before another judge, as if it had not been earlier heard and determined by the same court. It has been held by the Court of Appeal that a retrial order or *de novo* trial is an order that the whole case be re-tried or tried anew as if no trial whatsoever had been held in the first instance.[43] It is settled that when a case is begun *de novo* by another Court or Judge, the subsequent trial supersedes the first trial.[44] Thus, once a trial commences *de novo*, it is as if there was no

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[32] Sylvester Imhanobe, *Lawyer's Deskbook* (Temple Legal Consult, vol. 1, 2nd edn., 2010, Abuja) 241.
[33] Bryan A. Garner (Ed.), *Black's Law Dictionary* (Thomson Reuters, 12th edn., 2024, St Paul, MN, USA) 120.
[34] Section 318(1) Constitution of the Federal Republic of Nigeria 1999.
[35] Section 30 Court of Appeal Act (Cap C36) Laws of the Federation of Nigeria (LFN) 2004.
[36] (2020) 5 NWLR (Pt. 1717) 291 @ 316 paras. G-H *per* Eko, J.S.C.
[37] Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 430.
[38] Bako v. Shabu (2015) LPELR-24585(CA) (p. 23, para. A) *per* Ogbuinya, J.C.A.
[39] Ibid.
[40] Tandat v. Mugu (2023) LPELR-61391(CA) (p. 11, para. D, *per* Obiorah, J.C.A.).
[41] Oredoyin v. Arowolo (1989) 4 NWLR (Pt. 114) 172 @ 211; Attorney General of Oyo v. Fairlakes Ltd (1988) 5 NWLR (Pt. 92) 1; Ilochi A. Okafor, "The Appellate System of Justice in Nigeria" in T. O. Elias and M. I. Jegede (Eds.), *Nigerian Essays in Jurisprudence* (MIJ Publishers Ltd, 1993, Lagos) 332.
[42] Sylvester O. Imhanobe, *Lawyer's Deskbook* (Temple Legal Consult, vol. 1, 2nd edn., 2010, Abuja) 242.
[43] Alhaji Isiyaku Yakubu Ent Ltd v. Tarfa & anor (2014) LPELR-24223(CA) (Pp. 26-27 paras. F, *per* Sankey, J.C.A.).
[44] Orisa v. State (2015) LPELR-24636(CA) (p. 23 para. C).

trial *ab initio*.[45] Usually, there would be no basis either in law or in fact to refer to the earlier or first trial which was aborted.[46] The 'rehearing' in the case of a *de novo* trial is not the same with that in an appeal. While rehearing of a case *de novo* is done by the court which first heard and determined the case, an appeal is a reconsideration of the decision of a lower court by a higher court. Thus, although an appeal is by way of rehearing, it does not mean a retrial of the case.[47] The appellate court may make its own evaluation of the evidence in the record of proceedings at the trial. From the transcript of the evidence in the lower court, the appellate court may review the findings and inferences of facts and, where it considers it proper, may substitute its own view of the facts for the trial court.[48] In other words, an appeal is by way of rehearing in the sense that the appellate court is entitled to examine all the materials and arguments, that were formerly addressed to the court or courts below. This does not mean that the appellate court would sit as if the matter adjudicated by the lower court is before it for determination.[49] Therefore, the word "rehearing" in this context means a hearing on the printed records by re-examining the whole evidence before the trial court which were forwarded to the appellate court.[50] The court has held that rehearing in the context of an appeal means an examination of the case as a whole.[51] In summary, an appeal is generally regarded as a continuation of the original case, and not an inception of a new one.[52] Hence the position of the law is that an appeal though a fresh action is a continuation of the original suit.[53]

1.4 Right of Appeal

A right of appeal can be regarded as the legal power conferred by statute on a person; whether natural or artificial, to file an appeal against the decision of a lower court or tribunal.[54] A right of appeal may be derived from the Constitution or another statute, including the one establishing the court or tribunal.[55] The right must be conferred clearly and definitely, not necessarily by express words but at least by the clearest possible implication.[56] It cannot be fixed by a subsidiary enactment or common law.[57] More so, it cannot be conferred by the rules of court. All that the rules may do is to provide the procedure for hearing such an appeal.[58]

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[45] Federal Republic of Nigeria v. Afe (2022) LPELR-56649(CA) (Pp. 45-46 para. F, *per* Talba, J.C.A.).
[46] Ibid.
[47] Fidelis Nwadialo, *Civil Procedure in Nigeria* (University of Lagos Press, 2nd edn. 2000, Lagos) 773.
[48] Ibid.
[49] Ibid, 774.
[50] Ibid.
[51] Okotie-Eboh v. Okotie-Eboh (1986) 1 SC 479 at 507.
[52] Fidelis Nwadialo, *Civil Procedure in Nigeria* (University of Lagos Press, 2nd edn. 2000, Lagos), 772; Oredoyin v. Arowolo (1989) 4 NWLR (Pt. 114) 172 at 211 *per* Oputa, J.S.C.
[53] Igbinomwanhia v. Iseria & Ors (2014) LPELR-22754(CA) (Pp. 15 paras. E) *per* Lokulo-Sodipe, J.C.A
[54] Jerry Amadi, *Modern Civil Procedure Law and Practice in Nigeria* (Pearl Publishers International Ltd., vol. II, 2nd edn., 2021, Port Harcourt) 3646.
[55] Olanrewaju Aladeitan and Chima Ezeogo Uduma, "The Nigerian Quasi-Unitary Appellate System - A Call for Review", (2020) 16 National Judicial Institute Law Journal (NJILJ) 28.
[56] Ibid; Onitiri v. Benson (1960) SCNLR 314 / (1960 5 FSC 150.
[57] Olanrewaju Aladeitan and Chima Ezeogo Uduma, "The Nigerian Quasi-Unitary Appellate System - A Call for Review", (2020) 16 National Judicial Institute Law Journal (NJILJ) 28; Iloka v. Utomi (1999) 2 NWLR (Pt. 592) 583.
[58] Olanrewaju Aladeitan and Chima Ezeogo Uduma, "The Nigerian Quasi-Unitary Appellate System - A Call for Review", (2020) 16 National Judicial Institute Law Journal (NJILJ) 28.

An appellant must come within the provisions of the statute creating such a right to be entitled to exercise the right of appeal.[59] Thus, statutes provide when a right of appeal is available, and when it is not or does not subsist. Statutes also provide the time and manner in which a right of appeal can be exercised.[60] The Supreme Court buttressed this position when it held that the right of appeal is a statutory right, that it cannot be denied or subjected to the jurisdiction of a judex.[61] Therefore, where statute expressly removes the right to appeal on any subject matter no right of appeal can be exercised.[62] It should be noted, as pointed out earlier, that apart from being a statutory right, a right of appeal is generally a constitutional right. The Constitution of the Federal Republic of Nigeria conferred appellate jurisdiction on the courts it created. Thus, right of appeal can be exercised in relation to those courts as prescribed by the Constitution.[63] The right to appeal is not lost simply on the ground that it was not exercised within the time stipulated by the Constitution or a statute. Where an applicant adduces good and substantial reason on why he could not exercise the right by filing his appeal within the time prescribed for appeal, the appellate court may entertain the appeal.[64]

2.0 Commencement of Appeal

As a foundation, the mode or way of initiating a legal action before any court of law or court of record, is regulated by the rules of procedure and practice or other relevant statutory provisions applicable in the particular court.[65] Generally, an action is commenced in court by an originating process. There are different types of originating process to be employed, depending on the nature of the action, where a court is sitting in its original jurisdiction. The various rules of courts such as High Court Civil Procedure Rules of the different States, prescribe the specific originating process to be employed in commencing a particular action. For instance, an action can be commenced in the High Court, sitting in its original jurisdiction, by any of the originating processes namely, writ of summons, petition, originating motion, or originating summons.

Just as an action is commenced by an originating process where a court is sitting in its original jurisdiction, so also is an appeal commenced by an originating process where a court is sitting in its appellate jurisdiction. A Notice of Appeal is the originating process by which an appeal is commenced.[66] The court has held that 'a Notice of Appeal is the spinal cord of an appeal, as it is the foundation and substratum upon which an appeal is based being the originating process which sets the ball rolling for the proper, valid and lawful commencement of an appeal.'[67] A notice of appeal is the foundation of an appeal. Thus, any defect in a notice of appeal will divest the appellate court of the requisite jurisdiction to entertain the appeal and consequently render the entire appeal incompetent.[68] The Supreme Court has held that –

[59] Fidelis Nwadialo, *Civil Procedure in Nigeria* (University of Lagos Press, 2nd edn., 2000, Lagos) 772.
[60] Jerry Amadi, *Modern Civil Procedure Law and Practice in Nigeria* (Pearl Publishers International Ltd., vol. II, 2nd edn., 2021, Port Harcourt) 3617.
[61] Ani v Otu (2017) 12 NWLR (Pt.1578) 30 SC.
[62] Jerry Amadi, *Modern Civil Procedure Law and Practice in Nigeria* (Pearl Publishers International Ltd., vol. II, 2nd edn., 2021, Port Harcourt) 3646.
[63] Ibid.
[64] Ani v. Oti (2017) 12 NWLR (Pt. 1578) 30 at 59 para. C, *per* Augie, J.S.C.
[65] Fabby & Ors v. Fode Drilling (Nig.) Ltd. (2025) LPELR-81161(SC) (Pp. 34-35 paras. A) *per* Garba, J.S.C.
[66] Joseph & Ors v. Head of Service, Benue State & Ors (2024) LPELR-62293(CA) (Pp. 18-19 para. D)
[67] Ibid, *per* Georgewill, J.C.A.
[68] Sylvester Imhanobe, Lawyer's Deskbook (Temple Legal Consult, vol. 1, 2nd edn., 2010, Abuja) 244.

> … a valid Notice of Appeal is a sine qua non to the assumption of jurisdiction by the Court over an appeal; being the originating process used for the purpose of the proper invocation of the requisite judicial power and authority over an appeal, and without which the Court would lack the vires to entertain and adjudicate over the appeal…[69]

The Black's Law dictionary defines a notice of appeal as a document filed in court and served on the other party or parties, stating an intention to appeal a trial court's judgment or order.[70]

2.1 Grounds of Appeal

The contents of a notice of appeal includes *inter alia* particulars of the decision of the court complained about. The court in this context may mean the trial court which is also referred to as court of first instance, or the lower court which can be referred to as the court below, in the case of a double appeal. The contents of a notice of appeal also contains *inter alia* the grounds of appeal, particulars of each ground of appeal and relief sought. The ground of appeal is a compulsory part of a notice of appeal.[71] The grounds of appeal are the reasons for which the decision of a court is considered by the aggrieved party to be wrong. The purpose of the grounds of appeal is to isolate and accentuate for attack the basis of the reasoning of the decision challenged.[72] For a ground of appeal to be meritorious, it must be germane to the controversy that the court of first instance, or court below determined in its decision.[73] Parties are bound by their grounds of appeal and are not at liberty to argue grounds not related to the decision appealed against.[74] Generally, there are five grounds of appeal *viz* grounds of misdirection, grounds of error in law, grounds of facts, grounds of mixed law and facts, and omnibus ground.[75] The Supreme Court case of *Board of Customs and Excise v Barau*[76] is informative as it makes a distinction between the different types of grounds of appeal.[77] The Court noted that where a trial court fails to apply the facts, which it has found, correctly to the circumstances of the case before it, and there is an appeal to a Court of Appeal which alleges a misdirection in the exercise of the application by the trial court, the ground of appeal alleging the misdirection is a ground of law, and not of fact.[78] Furthermore, where the complaint is that the decision of the trial court is either against evidence or weight of evidence or contains unresolved contradictions in the evidence of the witnesses, what is being alleged is purely a ground of fact that requires leave for an appeal to the Court of Appeal or a further appellate court.[79] On the other hand, where a ground of appeal questions the evaluation of facts before the application of the law, it is a ground of mixed law and fact. But where a ground raises a question of pure fact is a ground of fact.[80]

[69] Ikponmwen v. Asemota & Anor (2022) LPELR-56594(SC) (p. 7 para. A).
[70] Bryan A. Garner (Ed.), *Black's Law Dictionary* (Thomson Reuters, 12th edn., 2024, St Paul, MN, USA) 1275.
[71] Sylvester Imhanobe, *Lawyer's Deskbook* (Temple Legal Consult, vol. 1, 2nd edn., 2010, Abuja) 247.
[72] Saraki & Anor v. Kotoye (1992) LPELR-3016(SC) (p. 22 para. C) *per* Karibi-Whyte, J.S.C.
[73] Sylvester Imhanobe, *Lawyer's Deskbook* (Temple Legal Consult, vol. 1, 2nd edn., 2010, Abuja) 247.
[74] Saraki & Anor v. Kotoye (1992) LPELR-3016(SC) (p. 24 paras. B-C) *per* Karibi-Whyte, J.S.C.
[75] Sylvester Imhanobe, *Lawyer's Deskbook* (Temple Legal Consult, vol. 1, 2nd edn., 2010, Abuja) 247 - 248.
[76] (1982) 10 SC 48 / (1982) LPELR-786(SC)
[77] Sylvester Imhanobe, *Lawyer's Deskbook* (Temple Legal Consult, vol. 1, 2nd edn., 2010, Abuja) 248.
[78] Board of Customs and Excise v Barau (1982) 10 SC 48 / (1982) LPELR-786(SC) (Pp. 58-59 paras. G – D), *per* Kayode Eso, J.S.C.
[79] Ibid, (p. 59 paras. D-G), *per* Kayode Eso, J.S.C.
[80] Sylvester Imhanobe, *Lawyer's Deskbook* (Temple Legal Consult, vol. 1, 2nd edn., 2010, Abuja) 250.

As stated earlier, a notice of appeal contains *inter alia* the grounds of appeal and particulars of each ground of appeal. However, the omnibus ground does not admit of particulars and it is mostly used in civil cases in which the burden of proof is on a preponderance of evidence, also known as proof on a balance of probability.[81] From the above, it can be stated as already distilled by the court, that a ground of appeal may complain of any three matters *viz* question of law, question of fact, or question of mixed law and fact.[82]

2.1.1 Grounds of Law or Question of Law

The Supreme Court pointed out *inter alia* in the case of *Board of Customs and Excise v Barau*[83] that where a ground of appeal complains of a misunderstanding by the lower court of the law or a misapplication of the law to the facts already proved or admitted, it is a ground of law. The Supreme Court emphasised this position in the case of *Ogbechie & Ors v. Onochie & Ors.*[84] where it held *per* Eso JSC that -

> ... what is required is to examine thoroughly the grounds of appeal in the case concerned to see whether the grounds reveal a misunderstanding by the lower tribunal of the law, or a misapplication of the law to the facts already proved or admitted, in which case it would be a question of law.

From the above, a ground of law or question of law (also known as ground of appeal on question of law) means a misunderstanding of the law, or a misapplication of the law to the facts already proved or admitted by the lower court or tribunal.

A more elaborate description of grounds of law or question of law was given by the Supreme Court in the case of *Ugboaja v. Akitoye-Sowemimo & Ors*[85] where the court held *per* Onnoghen JSC thus -

> … a question of law or grounds of law can be said to have three meanings, to with [sic]:- a) a question the Court is bound to answer in accordance with a rule of law, the process of answering of which question the Court would exercise no discretion in whatever manner; it is a question pre-determined and authoritatively answered by the law, b) the second meaning is as to what the law is; an appeal in which the question for argument and determination is what the true rule of law is on a certain matter which question usually arises out of the uncertainty of the law; c) the third meaning is in respect of those questions which are committed to and answered by the authority which normally answers questions of law only; that is any question which is within the province of the judge instead of a jury is a question of law, even though in actual sense it is a question of fact, within this meaning can be identified the interpretation of documents, which is often a question of fact, but is within the province of the judge.

In the above case, the court pointed out three different meaning of question of law *viz* question which has been pre-determined and authoritatively answered by the law of which the court has no discretion to exercise; question which

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[81] Ibid, 251.

[82] Jerry Amadi, *Modern Civil Procedure Law and Practice in Nigeria* (Pearl Publishers International Ltd., vol. II, 2nd edn., 2021, Port Harcourt) 3689.

[83] (1982) 10 SC 48 / (1982) LPELR-786(SC).

[84] (1986) 17 NSCC (Pt. 1) 443 / (1986) LPELR-2278(SC) (Pp. 8 para. C); Nikagbate v. Opaye (2018) 9 NWLR (Pt. 1623) 85 / (2018) LPELR-43704(SC) (p. 4 para. E).

[85] (2008) LPELR-3315(SC) (Pp. 16-17 para. D).

requires the court to state what the true rule of law is on a particular matter; and lastly, question which only the court has the authority to answer by virtue of their interpretation function.

2.2 Types of Appeal

There are basically two types of appeal stated in the Constitution *viz* appeal as of right[86] and appeal with leave.[87] Appeal as of right is an appeal over which an appellate court must exercise review because it has no discretion to deny review.[88] It is also regarded as an appeal to a higher court from which permission need not be first obtained.[89] In other words, appeal as of right means that the party appealing does not need the permission of court to file an appeal, particularly where such party is within the time prescribed to file the appeal. If he fails to commence the appeal within the prescribed period, he will certainly require leave of court to extend or enlarge the period of time within which to appeal, but he does not need a trinity prayer to obtain the indulgence of the court.[90]
Section 242 of the Constitution provides for the second type of appeal, that is, appeal with leave. Rhodes-Vivour, JSC in the Supreme Court case of *Nikagbate v. Opaye*,[91] submitted that "Leave" means permission of the court. Appeal with leave of court is therefore an appeal for which permission must first be obtained from the court[92] before the appeal can be initiated.
Whether an appeal would be as of right, or leave of court would be required to appeal, is determined by the nature of the question complained of in the ground of appeal filed by the appellant. This means that where a party is not entitled to appeal as of right, leave of court will be required to appeal. Thus, the court's permission is required to initiate an appeal against the decision of a trial court or lower court where a party is not entitled to appeal as of right. Consequently, any notice of appeal filed in the Court of Appeal or the Supreme Court where the grounds of appeal are on facts or mixed law and facts, and leave was not obtained before filing the notice of appeal is null and void and of no effect, and the appeal will be struck out.[93]

2.2 Appeals from Magistrate's Court to High Court of a State

By virtue of section 272(2) of the Constitution, the High Court of a State exercises appellate or supervisory jurisdiction over courts subordinate to or lower than the High Court in the hierarchy of courts. As a superior court of record, the High Court of a State is conferred with jurisdiction to entertain appeals from decisions of subordinate courts, like Magistrates courts, District court, Area court or the equivalent, and Rent Control and Recovery of Residential Premises Tribunal or similar tribunal (if any) in a State. In respect of Area courts, appeals from any of its

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[86] Sections 233(2), 241 Constitution of the Federal Republic of Nigeria 1999.
[87] Section 242 Constitution of the Federal Republic of Nigeria 1999.
[88] Bryan A. Garner (Ed.). (2024). *Black's Law Dictionary* (12th ed.). St Paul, MN, USA: Thomson Reuters, page 120.
[89] Bryan A. Garner (Ed.), *Black's Law Dictionary* (Thomson Reuters, 12th edn., 2024, St Paul, MN, USA) 120.
[90] Jerry Amadi, *Modern Civil Procedure Law and Practice in Nigeria* (Pearl Publishers International Ltd., vol. II, 2nd edn., 2021, Port Harcourt) 3632.
[91] (2018) 9 NWLR (Pt. 1623) 85/(2018) LPELR-43704(SC) (p. 6 para. C); Yaro v. Arewa Construction Ltd & Ors (2007) LPELR-3516(SC) (p. 22 para. B)
[92] Bryan A. Garner (Ed.), *Black's Law Dictionary* (Thomson Reuters, 12th edn., 2024, St Paul, MN, USA) 120.
[93] Nikagbate v. Opaye (2018) 9 NWLR (Pt. 1623) 85 at p. 98 para. B / (2018) LPELR-43704(SC) (p. 6 paras. C-E, *per* Rhodes-Vivour, J.S.C.

decisions not involving question of Islamic personal law or customary law shall lie to the State High Court. Section 277 of the Constitution vests jurisdiction in the Sharia Court of Appeal to hear appeals from decisions of Area courts in respect of appeal involving question of Islamic personal law in civil proceedings. Section 282 of the Constitution also curtailed the appellate jurisdiction of a High Court in respect of appeals involving question of customary law from decisions of Area court in civil proceedings. The appellate jurisdiction in such matters is vested in the Customary Court of Appeal of the State.[94]

As a creation of State law, the jurisdiction of Magistrate's court is enshrined in the law establishing the court. Appeals from decisions of Magistrate's court lie to the High Court. Such appeal may be as of right or with leave of court. Magistrate's court is usually a court of first instance exercising original jurisdiction over certain matters. In some States, Magistrate's Court is empowered by law to exercise appellate jurisdiction in which it hears and determines appeals from Customary Court. But with the establishment of Customary Court of Appeal in some States, Magistrate's Court in those State has been divested of its appellate jurisdiction in civil matters.

2.3 Appeal from High Court to Court of Appeal

Civil appeals to the Court of Appeal are by way of rehearing.[95] The Court of Appeal is entitled to re-examine the whole evidence tendered in the trial at the court of first instance. It is the entire course of trial as compiled in the record of appeal that will be re-examined.[96] Appeals from the High Court lie to the Court of Appeal as of right under section 241(1) of the Constitution, and with leave of court under section 242 of the Constitution.

Section 241(1) of the Constitution provides *inter alia* that an appeal shall lie from a High Court to the Court of Appeal as of right where the appeal is against any final decision in any civil proceedings before the High Court sitting at first instance,[97] that is, sitting as a trial court or in its original jurisdiction. The right given in this sub-section is a general right of appeal. It entails a right of appeal as of right whether on law, or facts, or mixed law and facts. The only restriction being that it is confined to final decisions of a High Court sitting at first instance.[98] A final decision is one that brings the action to an end. It is in contra-distinction to an interlocutory decision which does not completely dispose of the matter.[99] Section 241(1)(b) of the Constitution, which is the basis of this discourse provides that an appeal shall lie to the Court of Appeal as of right where the ground of appeal involves question of law alone.

Section 242 of the Constitution which deals with appeal with leave states that the section is made subject to the provisions of section 241 of the Constitution. Where the provisions of a section of an enactment or clause in a document, is made subject to another section or clause respectively, the Supreme Court has held that it is used to assign a subordinate position to a clause, section or an enactment or provide for qualifications.[100] The Court reiterated that when a provision in a statute is subjected to another provision requiring something to be done, the first provision

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[94] Lawal Pedro, *Jurisdiction of Courts in Nigeria*: *Materials and Cases* (Revised edn., Lagos State Ministry of Justice Law Review Series, 2011, Lagos) 221.

[95] Sylvester O. Imhanobe, *Lawyer's Deskbook* (Temple Legal Consult, vol. 1, 2nd edn., 2010, Abuja) 242.

[96] Ibid, 243.

[97] Section 241(1)(a) Constitution of the Federal Republic of Nigeria 1999.

[98] Nafiu Rabiu v. The State (1980) 8-11 SC 130 / (1980) NSCC 291; Aqua Ltd v Ondo State Sports Council (1988) 4 NWLR (Pt 91) 622; The Registered Trustees of AMORC (Nigeria) v. Awoniyi (1994) 7 NWLR (Pt. 355) 154 / (1994) 7-8 SCNJ 39.

[99] Fidelis Nwadialo, *Civil Procedure in Nigeria* (University of Lagos Press, 2nd edn., 2000, Lagos) 789.

[100] Kaycee (Nig) Ltd v. Prompt Shipping Corporation & anor (1986) LPELR-1680(SC) (Pp. 14-15 para. B).

is conditional upon the performance of what is required by the provision referred to. Thus, the expression "subject to" therefore confers a right to priority in favour of the legislation or provision to which another is subject.[101]

2.4 Double Appeal

A double or further appeal may be described as a subsequent appeal to a higher court against the decision of a court below which has exercised its appellate jurisdiction by hearing and determining a case appealed to it from the court of first instance. Double or further appeal therefore means that the case has already been considered and determined by the first appellate court. In the context of this discourse, a double appeal will therefore denote an appeal from the High Court to the Court of Appeal where the case appealed against emanated from the Magistrate's Court. The Court of Appeal has held that a double appeal is one where the High Court sits as an appellate Court over decisions of inferior Courts.[102] It is obvious from the hierarchy of courts that the Court of Appeal has jurisdiction to the exclusion of any other court, to hear and determine appeals from the High Court of a State, including Federal High Court and National Industrial Court, as well as from statutorily recognised tribunals such as Court-martial[103] and the Code of Conduct Tribunal.[104]

Furthermore, aside double appeal from High Court to Court of Appeal, double appeal could also denote an appeal from the Court of Appeal to the Supreme Court where the court of first instance is the High Court.

2.4.1 Nature of Decision and Type of Appeal in a Double Appeal on Question of Law

It will be pertinent at this juncture to replicate some of the provisions of the Constitution on the two types of appeal *viz* appeal as of right and appeal with leave. The provisions of section 241(1)(a) and (b) of the Constitution which are germane to this discourse state thus –

> An appeal shall lie from decisions of … a High Court to the Court of Appeal as of right in the following cases -
>
> (a) final decisions in any civil … proceedings before … a High Court sitting at first instance;
>
> (b) where the ground of appeal involves questions of law alone, decisions in any civil … proceedings …

Section 242 of the Constitution which deals with appeal with leave states thus –

> (1) Subject to the provisions of section 241 of this Constitution, an appeal shall lie from decisions of … a High Court to the Court of Appeal with the leave of that … High Court or the Court of Appeal.
>
> (2) The Court of Appeal may dispose of any application for leave to appeal from any decision of … a High Court in respect of any civil … proceedings in which an appeal has been brought to … a High Court from any other court after consideration of the record of the proceedings, if the Court of Appeal is of the opinion that the interests of justice do not require an oral hearing of the application.

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[101] Ibid, (Pp. 14-15 paras. B-B) *per* Karibi-Whyte, J.S.C.

[102] Ogbonna v. Okoro (2022) LPELR-58612(CA) (p. 11, para. A, per Abdullahi JCA); Madoubuchukwu v. Madoubuchukwu (2006) All FWLR (Pt. 318) 695 @ 710 paras C-A.

[103] Section 240 Constitution of the Federal Republic of Nigeria 1999.

[104] Section 246 Constitution of the Federal Republic of Nigeria 1999.

From the above provisions, an appeal shall lie as of right where it is a final decision of a High Court sitting at first instance. In the same vein, an appeal shall lie as of right where the ground of appeal involves questions of law alone.[105] One question to be addressed on issue of ground of appeal involving question of law alone is - should the decision of the High Court appealed against, be a final or interlocutory decision where the court is sitting at first instance? The next question is would the position be different where the court is sitting in its appellate jurisdiction? It is clear from the provisions of section 241(1)(b) of the Constitution that where the ground of appeal is on question of law, the appeal shall be as of right. However, on the aspect of whether such decision of the High Court appealed against should be final or interlocutory, the Court of Appeal has in a plethora of cases held that the core issue is whether the ground of appeal is on question of law, and not whether the decision is final or interlocutory. In the case of *Hon. Min. of FCT & Anor v. Mononia Hotel (Nig) Ltd & Anor*,[106] the Court of Appeal held that the right of a party to appeal against the decision of a High Court under the 1999 Constitution has been classified into two categories - appeal as of right and appeal with leave of court. Under section 241(1)(b) of the Constitution where the ground of appeal involves questions of law alone, the appeal is as of right whether the decision was final or interlocutory. Furthermore, in the case of *Iseghohi v FRN*,[107] it was held that the distinction as to whether or not leave should be sought and obtained before filing an appeal as prescribed by sections 241(1) and 242(1) of the Constitution is not dependent only on whether or not an appeal is final or interlocutory. Rather it is on whether the appeal is on law alone or on facts or mixed law and fact. In other words, even if an appeal is not a final decision as envisaged under section 241(1)(a) of the Constitution, but it is a decision that involves questions of law alone, the appeal can be filed as of right.[108] This means that although it is an interlocutory decision of a High Court, an appeal against it to the Court of Appeal can be brought as of right on grounds of law by virtue of section 241(1)(b) of the 1999 Constitution.

This paper aligns itself with the above decisions of the Court of Appeal and reiterates that irrespective of whether the decision is a final decision or interlocutory decision of the High Court, an appeal against the decision of the court should be as of right where the ground of appeal is on question of law alone, and where the court is sitting at first instance. The next question is, would the position be different where the court is sitting in its appellate jurisdiction? From the decisions of the court above, the answer to this question will be in the negative. In a more recent case, the Court of Appeal reiterated the position of law when it held that the wordings of section 241(1)(b) of the 1999 Constitution are very clear and must be given their literal meaning without any addition or assumed imputations whatsoever. Thus, starting from the standpoint of the word “decisions”, it is clear that the word means a judgment, conclusion, or resolution firmly reached or given, which amounts to a verdict when the mind of the Court is made up on an issue raised. The quality of this word was not described in any way as final or interlocutory.[109] Furthermore, the phrase “sitting at first instance” or “sitting on appeal” was not used in section 241(1)(b) of the Constitution. It therefore means that the position would not be different where the court is sitting in its appellate jurisdiction.

The final question to be addressed is in two folds. The first part is should the appeal be as of right or with leave of court where the ground of appeal is on question of law and where the appeal is against the decision of the High Court sitting in its appellate jurisdiction? Secondly, does the type of appeal in the circumstance differ where the appeal is

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[105] Ene v. Asikpo & Anor (2009) LPELR-8723 (CA); Akura v. Akpom (2021) LPELR-55495(CA).
[106] (2010) LPELR-4257(CA) (p. 6 para. E).
[107] (2017) LPELR-42875 (CA).
[108] Ibid.
[109] Kellogg Company v. Infinity Snacks & Beverages Ltd (2022) LPELR-59340(CA) (Pp. 12-13 paras. G-B).

against the decision of the High Court sitting as a court of first instance? The answers to the two questions would be the same. As stated above, the phrase "sitting at first instance" or "sitting on appeal" is not stated in section 241(1)(b) of the 1999 Constitution. However, the Court of Appeal case of *Emeka v. Idris*,[110] is relevant. The Court held thus -

> By virtue of Sections 241(1) and 242(1) of the Constitution of the Federal Republic of Nigeria, 1999, an appeal from the High Court given in its appellate jurisdiction requires the leave of either the High Court or the appellate Court. In other words, leave of the Court is required before a competent and valid appeal can be lodged. This requirement of leave is mandatory and non compliance therewith renders the appeal incompetent and the proceedings based a nullity. In the instant case the appellant was duty bound to obtain the leave of either the High Court or the Court of Appeal as the High Court was sitting in its appellate jurisdiction. Since no leave was obtained the appeal was incompetent and was therefore struck out.

The decision in *Emeka's case* seems to refer to all instances where the High Court delivered a decision while sitting in its appellate jurisdiction, but that is not the essence of the above decision. The facts of the case borders on appeal against an interlocutory decision, and the ground of appeal was not on question of law alone. Secondly, in a more recent case of *AEPB v. Ojehomon*[111] the Court of Appeal held that by the provisions of section 241 of the 1999 Constitution of the Federal Republic of Nigeria, an appeal shall lie as of right from the final decisions of any proceeding before the High Court if the court is sitting at first instance. But if the appeal is from its decision while sitting in an appellate jurisdiction, then, there must be leave of court in line with the right to appeal with leave under section 242 of the Constitution. It also seems from this decision that generally, where the High Court is sitting in its appellate jurisdiction, appeal shall lie with leave of court against the decision of the court. But that is not the import of the decision of the court in this case. The case does not border on ground of appeal on question of law alone, rather all the grounds of appeal involved questions of fact, and mixed law and fact.

There is a plethora of cases in which the position of the court is clear on the issue. In *Kellogg Company v. Infinity Snacks & Beverages Ltd*,[112] the Court of Appeal held *inter alia* that it is up to the Court to carefully peruse section 241(1)(b) of the 1999 Constitution and come to a decision on its meaning. The sub-section states that an appeal shall lie from decisions of a High Court to the Court of Appeal as of right where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings. The court further stated that the highlighted word in the sub-section is the word "Any". This literarily means just about anything. Thus, it is not a limiting or restrictive word and can certainly accommodate the widest variety of what it references. Therefore, section 241(1)(b) of the 1999 Constitution envisages final, interlocutory, appellate decisions and even case stated. It certainly did not state whether the decision had to emanate from an original or appellate jurisdiction. It simply said "Any".[113] It is clear from this decision that the type of appeal envisaged in section 241(1)(b) of the Constitution is appeal as of right even where the High Court sits as an appellate court. More so, in the recent case of *Akeem & Anor v. FRN*,[114] the Court of Appeal held that 'the provision of section 241(1) and all the sub-sections thereto connotes that where an appeal touches on any of the sub-sections, the same accrues as of right and the appellant is not expected or mandated to seek for any

[110] (2017) LPELR-43228(CA) (Pp. 10-11 paras. C) *per* Bdliya, J.C.A.
[111] (2022) LPELR-58033(CA) (Pp. 12 paras. C).
[112] (2022) LPELR-59340(CA) (Pp. 12-19 paras. B-B),
[113] Ibid. (Pp. 13-14 paras. E-B).
[114] (2024) LPELR-62307(CA) (Pp. 20-21 para. C).

leave of court.' It should be noted that the fact that the Constitution is the supreme law of the land makes it *sui generis*. As an organic instrument and the supreme law of the land, courts usually lean to the broader interpretation unless there is something in the Constitution to indicate that a narrower interpretation will best carry out the objects and purposes of the Constitution.[115]

2.5 Principle of Similarity Rule of Statutory Interpretation

Assuming, but not conceding that there are no pronouncements on section 241(1)(b) of the extant Constitution by the Court of Appeal, and since there appears to be no pronouncement of the Supreme Court, the issue would still be settled law. This is because by virtue of the principle of similarity rule of interpretation of statutes, the Supreme Court's pronouncement on the previous Constitution can apply to the extant Constitution. The Supreme Court has held in the case of *Fasakin Foods (Nig.) Ltd. V. Shosanya*[116] that where a party relies on the provisions of a previous Constitution for purposes of interpreting the provisions of a more current one, the provisions of the previous Constitution must be the same as those of the current one.[117] Therefore, "similarity rule" of interpretation of statutes would apply to section 241(1)(b) of the 1999 Constitution in respect of appeal against the decision of a High Court sitting in its appellate jurisdiction. Referring to the similarity rule, the Supreme Court held in the recent case of *Heritage Bank Ltd. V. MEENS (Nig.) Ltd.*[118] That "for the 'similarity rule' of interpretation of statutes to apply, the two provisions, the one already construed and the virgin provision, which yearns and hunger for interpretation, must be identical: one a clone/mirror of the other. The rule loses steam where the provisions are mutually exclusive."[119] It further held that –

> … it is a ecognized principle that where the provisions of a statute or section of a statute are in pari materia, light may be thrown on the meaning of such a provision of a statute or section which is in pari materia by referring to a previous decision of a competent Court where similar provision previously had been considered…[120]

Prior to the 1999 Constitution, the Supreme Court had given decisions on this issue. In the case of *Rabiu v. Kano State*,[121] the Supreme Court *per* Idigbe, J.S.C pointed out that a close examination of the provisions of the 1960 and 1963 Constitutions will show that for the first time in the legal history of this country (that is, by the 1979 Constitution) a right of appeal – as of right and not by leave of court – has by section 220(1)(b), been given to parties or litigants on questions of law alone but, only in (1) non-final (i.e. interlocutory) decisions and (2) in decisions given by the High Court – whether in civil or criminal proceedings – when not sitting at first instance (i.e. in a case of 'double appeals'). It should be noted that section 220(1)(b) of the 1979 Constitution is in *pari materia* with section 241(1)(b) of the 1999 Constitution.

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[115] Fabian Ajogwu, *Law and Society* (Centre for Commercial Law Development, 2013, Lagos) 17.
[116] (2006) LPELR-1244(SC).
[117] Ibid, (p. 24, paras. C-D) *per* Niki Tobi, J.S.C.
[118] (2025) LPELR-80577(SC).
[119] Ibid, (p. 22, paras. E-F) *per* Ogbuinya, J.S.C.
[120] Ibid, (p. 20, paras. A-C) *per* Ogbuinya, J.S.C.
[121] (1980) LPELR-2936(SC) (Pp. 39-40 para. E).

The Court further stated that prior to the 1979 Constitution a party appealing from a decision which falls into the second category, that is, in the case of 'double appeals' in civil or criminal proceedings, whether on point of law, facts or mixed law and facts, could only do so by leave of the Court. The above decision of the Supreme Court points to the fact that under the 1979 Constitution, an appeal shall lie as of right where the appeal is on question of law alone, and the decision appealed against is an interlocutory decision of the court sitting in its appellate jurisdiction. But under the 1960 and 1963 Constitutions, an appeal shall lie with leave of court where the High Court is sitting in its appellate jurisdiction under same circumstance. The position of the law in *Rabiu's case* was reinforced, to an extent, in a latter case of *Aqua Ltd. V. Ondo State Sports Council*,[122] where the Supreme Court *per* Uwais JSC interpreted *inter alia* section 220(1)(b) of the 1979 Constitution. The Court held that the provisions of sub-section (1)(b) apply to any civil proceedings that is either final or interlocutory, and the right of appeal shall be as of right, on condition that the ground of appeal raises question of law alone. The only aspect in which this case differs from *Rabiu's* case is that the Supreme Court, did not specifically state whether the High Court is sitting at first instance or on appeal. Therefore, the Supreme Court's decision in *Rabiu's* case can be applicable to any appeal that borders on section 241(1)(b) of the 1999 Constitution where the High Court's decision was given while sitting in its appellate jurisdiction, since section 220(1)(b) of the 1979 Constitution is in *pari materia* with that section. The fact that the Constitution changed from 1979 to the extant one, does not mean the issue decided by the Supreme Court in *Rabiu's* case changed. A more recent decision of the Supreme Court on the issue of ground of appeal involving question of law alone is in the case of *Ikponmwen v. Asemota & Anor.*[123] Although the Court clarifies this issue based on the extant Constitution, the focus of the decision was on appeals from Court of Appeal to Supreme Court, and not appeals from High Court to Court of Appeal. The Supreme Court held *inter alia* that ground of appeal on law alone entitles a party or appellant to appeal as of right.

3.0 Conclusion

This paper is a discourse on the type of appeal by which the right of appeal can be exercised where the appeal is from High Court, sitting in its appellate jurisdiction, to the Court of Appeal and where the ground of appeal is on question of law alone. In this instance, the appeal to the Court of Appeal is a double appeal. A double or further appeal connotes that the case has already been considered and determined by the first appellate court, being the High Court in this context of this paper. A right of appeal is a right which may be derived from the Constitution or another statute, including the one establishing the court or tribunal.[124] This means that an appellate jurisdiction is statutory; the jurisdiction to hear and determine appeals exercisable by one court over another must be statutorily conferred. Consequently, no superior court of record or appellate court has jurisdiction to entertain an appeal against the decision of a lower court or a tribunal except such court has been vested with such power either by the Constitution of some other statute. There is therefore no right of appeal unless it is conferred by statute or the Constitution.[125]

[122] (1988) 4 NWLR (Pt. 91) 622 / (1988) LPELR-527(SC) (Pp. 31-32 paras. C-C).
[123] (2022) LPELR-56594(SC) (p. 7 para. A).
[124] Olanrewaju Aladeitan and Chima Ezeogo Uduma, "The Nigerian Quasi-Unitary Appellate System - A Call for Review", (2020) 16 National Judicial Institute Law Journal (NJILJ) 28.
[125] Ibid, 772.

The paper considered the two types of appeal *viz* appeal as of right and appeal with leave of court. Appeals as of right is an appeal in which the appellant does not need to seek and obtain the permission of the court first before filing.[126] It is obvious that appeal may be in civil matters or criminal cases. However, this paper narrowed down the discourse to only appeals in civil matters. An appeal has been defined as an application to a higher court for a scrutiny of the decision of a lower court or tribunal with a view to finding out whether that decision is in law and on the facts correct.[127] An appeal against decisions of the High Court in civil and criminal proceedings on grounds of law is provided in section 241(1)(b) of the 1999 Constitution. The type of appeal that can lie, in respect of this issue, to the Court of Appeal is appeal as of right, irrespective of whether the decision of the High Court is final or interlocutory. On the issue of type of appeal that accrues where the ground of appeal is on question of law, in a double appeal from High Court to Court of Appeal, it appears that there is no pronouncement of the Supreme Court on the extant Constitution (that is, 1999 Constitution). However, based on the principle of similarity rule of statutory interpretation, the decision of the Supreme Court in respect of the provisions of section 220(1)(b) of the 1979 Constitution can be applicable to section 241(1)(b) of the extant Constitution (that is, the 1999 Constitution) since the former provision is in *pari materia* with the latter provision.

[126] Ibid.
[127] Fidelis Nwadialo, *Civil Procedure in Nigeria* (University of Lagos Press, 2nd edn. 2000, Lagos) 773.